

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE MARTIN FARLEY,

Defendant-Appellant.

UNPUBLISHED

April 18, 2006

No. 260104

St. Clair Circuit Court

LC No. 04-001183-FH

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), operating a motor vehicle with a suspended or revoked license, MCL 257.904, and unlawful use of a vehicle license plate, MCL 257.256. Defendant was also sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of 24 to 180 months for the drug conviction and was credited with time served for the remaining convictions. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he was denied the effective assistance of counsel at trial. Because defendant failed to raise this issue in an appropriate motion in the trial court, our review is limited to errors apparent on the record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004).

To establish ineffective assistance of counsel, a defendant must show that his counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant that he was denied the right to a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). The defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991).

Defendant first argues that counsel was ineffective for not challenging any of the jurors during voir dire. An attorney's decisions with regard to the selection of jurors involve matters of trial strategy, which this Court will not evaluate with the benefit of hindsight. *People v Johnson*, 245 Mich App 243, 259; 631 NW2d 1 (2001). It is rare, if ever, that a court will find that counsel was ineffective for failing to challenge a juror. *People v Robinson*, 154 Mich App 92, 95; 397 NW2d 229 (1986).

The record discloses that defense counsel conducted his own voir dire. Although counsel did not challenge any of the jurors for cause, or exercise any peremptory challenges, defendant has not identified any juror that he believes should have been challenged, nor does he point to any evidence in the record that supports his argument for this issue. There is no basis for concluding that defense counsel was ineffective for failing to challenge any of the jurors. *People v Rockey*, 237 Mich App 74, 77; 601 NW2d 887 (1999).

Next, defendant argues that the trial court improperly admitted testimony about a large amount of cash found in the vehicle he was driving at the time he was arrested. Defendant argues that the evidence was irrelevant. This issue is unpreserved because defendant did not object to this testimony at trial. Defendant argues, however, that counsel was ineffective for failing to object. We disagree.

When the police searched the vehicle defendant was driving, they found large amounts of cash in both defendant's wallet and a bag that was near the driver's seat. Defendant argues that this evidence was irrelevant and unduly prejudicial because it gave the jury reason to believe that he was dealing drugs. We disagree.

Relevant evidence is generally admissible. MRE 402; *People v Campbell*, 236 Mich App 490, 503; 601 NW2d 114 (1999). Evidence is relevant if it tends to make the existence of a fact at issue more or less probable than it would be without the evidence. MRE 401; *Campbell*, *supra*. Under MRE 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998).

Defendant denied being aware of the cocaine and pipe that were found in his vehicle. But the money was found in the vehicle and belonged to defendant. It was further evidence connecting defendant to the vehicle and the other items found in the car, which was the principal issue in the case. Therefore, the evidence was relevant, and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Because the evidence was relevant, defendant cannot show that defense counsel was ineffective for failing to object.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray